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VIA COURIER

March 1, 2005

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Federal Communications Commission  
Office of Secretary

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
c/o Natek, Inc.  
236 Massachusetts Avenue, N.E.  
Suite 110  
Washington, DC 20002

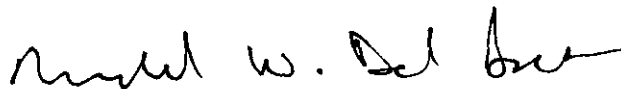
Re: Docket No. 99-200; Dialpad Communications, Inc.'s Petition for Limited Waiver  
of Section 52.15(g)(2)(i)

Dear Ms. Dortch:

Enclosed for filing are an original and four (4) copies of Dialpad Communications, Inc.'s  
Petition for Limited Waiver of Section 52.15(g)(2)(i) in the above-referenced docket.

Please date stamp the enclosed extra copy of this filing. Should you have any questions,  
please do not hesitate to contact Ron Del Sesto at (202) 945-6923.

Respectfully submitted,



William B. Wilhelm, Jr.  
Ronald W. Del Sesto, Jr.

Counsel for Dialpad Communications, Inc.

cc: Craig Walker, CEO

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20544**

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MAR - 1 2005

In the Matter of  
Dialpad Communications, Inc.  
Petition for Limited Waiver  
of Section 52.15(g)(2)(i) of the  
Commission's Rules Regarding Access  
to Numbering Resources

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Federal Communications Commission  
Office of Secretary

CC Docket No. 99-200

**PETITION FOR LIMITED WAIVER**

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March 1, 2005

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**PETITION FOR LIMITED WAIVER**

**I. INTRODUCTION**

Dialpad Communications, Inc. ("Dialpad"), respectfully requests that the Federal Communications Commission ("Commission") grant it a limited waiver of Section 52.15(g)(2)(i) of the Commission's rules, 47 C.F.R. § 52.15(g)(2)(i), to allow Dialpad to obtain numbering resources directly from the North American Numbering Plan Administrator ("NANPA") and/or the Pooling Administrator ("PA") in a manner comparable to the waiver granted to SBC Internet Services, Inc. ("SBC-IS").<sup>1</sup> Dialpad intends to use these numbering resources to continue to deploy IP-enabled services, including Voice over Internet Protocol ("VoIP") services on a commercial basis.

The Commission should grant this limited waiver request because good cause exists and granting the request would serve the public interest. Further, the Commission recently granted a similar petition for waiver to SBC Internet Services, Inc. ("SBC-IS") and stated in that order that the Commission would grant similar authority to those entities that sought similar relief.<sup>2</sup> By this

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<sup>1</sup> *In the Matter of Administration of the North American Numbering Plan*, Order, CC Docket 99-200, FCC 05-20 (released Feb. 1, 2005) ("*SBC-IS Waiver Order*").

<sup>2</sup> See *id* at ¶ 4.

petition, Dialpad seeks similar relief and intends to continue to deploy and to offer innovative new services using more efficient means of interconnection with the Public Switched Telephone Network ("PSTN"). Dialpad will be able to continue to improve and develop its service to the benefit of its customers if the Commission grants this Petition. The interconnection will be similar to the means used by a state-certificated carrier, but Dialpad would not be considered a carrier. Additionally, Dialpad requests the waiver of Section 52.15(g)(2)(i) in a manner comparable to the SBC-IS waiver and until the Commission adopts final numbering rules either through the North American Numbering Council or in the *IP-Enabled Services* proceeding.<sup>3</sup> Dialpad will comply with all of the relevant conditions established by the Commission in the *SBC-IS Waiver Order*.<sup>4</sup> Furthermore, Dialpad asks the Commission to review and grant its waiver request on an expedited basis.

## **II. BACKGROUND**

Dialpad is a communications and information services provider providing IP-enabled service offerings including broadband phone service and PC-to-Phone VoIP services in the United States and international markets. Dialpad is able to obtain access to telephone numbers through competitive local exchange carriers ("CLEC") by purchasing a Primary Rate Interface ("PRI") line or Direct Inward Dialing ("DID"). These telephone numbers are necessary for Dialpad customers on a broadband IP network to receive calls from parties served by a carrier operating a time division multiplexed ("TDM") network within the PSTN. According to the

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<sup>3</sup> *IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, 19 FCC Rcd 4863 (2004) ("*IP-Enabled Services NPRM*").

<sup>4</sup> *SBC-IS Waiver Order* at ¶¶ 4, 9.

arrangements with CLECs, the carrier terminates Dialpad's customer's communications on the PSTN or delivers the traffic to another carrier for termination on the PSTN.<sup>5</sup>

Under the Commission's existing rules, a "pure" provider of VoIP services like Dialpad is not able to directly acquire telephone numbers from NANPA or the PA.<sup>6</sup> Section 52.15(g)(2)(i) of the Code of Federal Regulations requires that an applicant requesting numbering resources must be "authorized to provide service in the area for which the numbering resources are being requested."<sup>7</sup> The Commission has interpreted this rule as requiring "carriers [to] provide, as part of their applications for initial numbering resources, evidence (*e.g.*, state commission order or state certificate to operate as a carrier) demonstrating that they are licensed and/or certified to provide service in the area in which they seek numbering resource[s]."<sup>8</sup> In other words, an applicant must be a state-certificated common carrier in order to obtain numbering resources directly from NANPA and/or the PA and VoIP providers are not.

Dialpad provides an interstate service,<sup>9</sup> and because Dialpad is not a state-certificated common carrier, the Company cannot obtain numbering resources directly from NANPA and/or the PA without a waiver of Section 52.15(g)(2)(i) of the Commission's rules. If Dialpad's waiver request is granted, the Company intends to offer VoIP services that interconnect with the PSTN in a more efficient manner by interconnecting with the PSTN on a trunk-side basis, at a centralized switching location, *e.g.*, a tandem switch. Dialpad believes that this type of

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<sup>5</sup> For example, interexchange traffic is delivered to incumbent LECs.

<sup>6</sup> SBC-IS is the sole exception because the Commission previously granted SBC-IS' waiver request.

<sup>7</sup> 47 C.F.R. § 52.15(g)(2)(i).

<sup>8</sup> *Numbering Recourse Optimization*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, 15 FCC Rcd 7574, ¶ 97 (2000).

<sup>9</sup> *In the Matter of Vonage Holdings Corporation*, 19 FCC Rcd 22404 (2004).

interconnection will allow it to use its softswitch and media gateways more efficiently to overcome the availability and scalability limitations inherent in retail interconnections with the PSTN.

Dialpad requests a limited waiver of Section 52.15(g)(2)(i) so that it can obtain numbering resources directly from NANPA and/or the PA without having to become a state-certificated common carrier. Allowing Dialpad to directly obtain numbers from NANPA and/or the PA will help to expedite the implementation of IP-enabled services that interconnect to the PSTN and will enable Dialpad to deploy innovate new services and encourage the rapid deployment of new technologies and advanced services that benefit American consumers. In addition, granting a waiver to Dialpad to facilitate new interconnection arrangements is consistent with Commission precedent.<sup>10</sup>

### **III. DISCUSSION**

#### **A. The Requested Waiver is Comparable to the SBC Internet Services, Inc. Waiver**

Dialpad submits that the Company's request for waiver is comparable to the waiver the Commission granted SBC-IS with one important difference – Dialpad, unlike SBC-IS, does not have a LEC affiliate. Dialpad submits that it will comply with all of the relevant conditions the Commission established in granting SBC-IS' request for numbering resources. Specifically, Dialpad will comply with the Commission's numbering utilization and optimization requirements and industry guidelines and practices. Dialpad will comply with all relevant numbering regulations. Dialpad will also file the Numbering Resource Utilization and Forecast

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<sup>10</sup> *SBC-IS Waiver Order* at ¶ 6.

Report (“NRUF”) and will comply with the thousand-block number pooling requirements and with local number portability requirements.<sup>11</sup>

In addition, Dialpad asserts that it will meet the “facilities readiness” requirements of Section 52.15(g)(2)(ii). Dialpad will provide a copy of an interconnection agreement approved by a state commission, or, alternatively, Dialpad will submit evidence, prior to filing an application for numbering resources, that it has ordered an interconnection service pursuant to a tariff that is generally available to other providers of IP-enabled voice services.<sup>12</sup> But Dialpad highlights that these particular requirements were adopted by the Commission to prevent discriminatory access to the network by SBC-IS’ LEC affiliate, SBC Communications Inc. Accordingly, Dialpad requests that the Commission allow VoIP providers without a LEC affiliate flexibility in meeting the facilities-readiness requirement by submitting redacted contracts with carriers or other similar forms of evidence to meet the Commission’s facilities readiness requirement. Dialpad only requests the waiver until the Commission adopts final numbering rules regarding IP-enabled services. Dialpad recognizes that the Commission has not yet decided whether any action relating to numbering resources is needed.<sup>13</sup> However, granting this limited waiver will not prejudice the outcome of the *IP-Enabled Services* proceeding because the Commission has complete discretion to take whatever action it finds necessary.

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<sup>11</sup> *Id.*

<sup>12</sup> *SBC-IS Waiver Order* at ¶ 10.

<sup>13</sup> *IP-Enabled Services NPRM* at ¶ 76 (seeking comments on the desirability of numbering resources for IP-enabled services).



**B. “Good Cause” Exists to Grant Dialpad’s Request for a Limited Waiver**

The Commission may waive a rule when “good cause” is demonstrated<sup>14</sup> and the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>15</sup> In addition, the Commission may take into account considerations of hardship, equity, or the more effective implementation of overall policy on an individual basis.<sup>16</sup> Accordingly, waiver of the Commission’s rules is appropriate when special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest.<sup>17</sup>

Special circumstances warrant a deviation from the general rule that limits the assignment of numbering resources to state-certificated carriers. By granting Dialpad’s request for waiver, Dialpad will be able to deploy more efficiently configured networks and services without having to subject itself to state common carrier regulation solely for the purpose of obtaining direct access to numbering resources. In the *SBC-IS Waiver Order*, the Commission emphasized that granting the waiver request would accelerate the implementation of IP-enabled services interconnected to the PSTN and allow for the deployment of innovative new services as well as spur the rapid deployment of innovative new services that benefit American consumers.<sup>18</sup> Granting Dialpad’s waiver request would serve to further the same goals and would encourage

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<sup>14</sup> 47 C.F.R. § 1.3; *see also* *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (“*WAIT Radio*”).

<sup>15</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

<sup>16</sup> *Id.*; *WAIT Radio*, 418 F.2d at 1159.

<sup>17</sup> *Id.*

<sup>18</sup> *SBC-IS Waiver Order* at ¶ 4.

the implementation of PSTN interconnected IP-enabled services and other new services and technologies. Accordingly, “good cause” exists to grant Dialpad’s waiver request.

The Commission would also serve the public interest by granting Dialpad’s request for waiver. In allowing Dialpad to achieve efficiencies that the Company cannot realize without direct access to numbering resources, the Commission is encouraging innovation and expediting the delivery of advanced services to consumers.<sup>19</sup> Granting Dialpad’s waiver petition furthers the public interest because it encourages the deployment of broadband infrastructure to United States’ citizens. The Commission has recognized that IP-enabled services have increased economic productivity and growth.<sup>20</sup> By granting this waiver, the Commission will stimulate the implementation of IP-enabled services and allow for increased communications choices for American consumers. Accordingly, granting the waiver request will serve the public interest.

**C. The Commission Should Grant Dialpad’s Waiver Request on an Expedited Basis**

In the *New Technology Policy Statement*, the Commission stated that it would review waiver requests for technical and market trials on an expedited basis.<sup>21</sup> Dialpad is seeking a waiver of Section 52.15(g)(2)(i) to deploy IP-enabled service offerings until the Commission adopts final numbering rules, even though the deployment is not a trial. Consequently, the Commission should review Dialpad’s request as described in the *New Technology Policy Statement*. As previously mentioned, the Commission has acknowledged the importance of

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<sup>19</sup> *Id.* at ¶ 6.

<sup>20</sup> *Id.* at ¶ 8; *IP-Enabled Services NPRM* at ¶ 5.

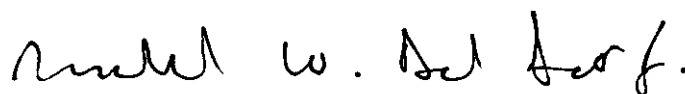
<sup>21</sup> *1998 Biennial Regulatory Review – Testing New Technology*, Policy Statement, CC Docket 98-94, FCC 99-53, ¶¶ 4, 20, 23-24 (1999) (“*New Technology Policy Statement*”).

encouraging the development of IP-enabled services.<sup>22</sup> Furthermore, Dialpad is only seeking a waiver until the Commission adopts final numbering rules for IP-enabled services.

#### IV. CONCLUSION

For the reasons described above, Dialpad respectfully requests that the Commission grant the Company a limited waiver of Section 52.15(g)(2)(i) of its rules—comparable to that granted to SBC-IS to allow Dialpad to obtain numbering resources directly from NANPA and/or the PA for use in the provision of IP-enabled services.

Respectfully submitted,



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March 1, 2005

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<sup>22</sup> *IP-Enabled Services NPRM* at ¶ 5.